

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
Alexandria Division

SIMPLY WIRELESS, INC.,)	
)	
Plaintiff,)	
)	
v.)	Civil Action No. 1:21-cv-00597 (AJT/JFA)
)	
T-MOBILE US, INC.,)	
<i>formerly known as</i>)	
<i>T-Mobile USA, Inc., et al.,</i>)	
)	
Defendants.)	
)	

ORDER

It is hereby

ORDERED that a supplemental hearing on the pending cross-motions for summary judgment be, and the same hereby is, SCHEDULED for Tuesday, April 19, 2022, at 11:00 a.m., by Zoom, with access information to follow separately by e-mail, and that in connection with that hearing counsel should be prepared to address what appears in the summary judgment record concerning the following:

1. What products Plaintiff sold on simplyprepaid.com during the period 2002 through 2008;
2. What products Plaintiff sold using the SIMPLY PREPAID mark through topTVstuff.com;
3. What use Plaintiff made of the SIMPLY PREPAID mark from April 2013 until its sales through Amazon in October 2015;
4. What products Plaintiff sold using the SIMPLY PREPAID mark through Amazon;

5. Other than the continued posting of SIMPLY PREPAID at its offices, what Plaintiff did during the three year period from 2009 through 2011 that evidenced its intent to resume the use of SIMPLY PREPAID within the foreseeable future and what relevance Plaintiff's post-2011 conduct had with respect to whether it abandoned the use of SIMPLY PREPAID as of the end of the three year period;
6. Assuming Plaintiff is deemed to have abandoned its use of SIMPLY PREPAID as of 2012, what re-established its ownership of SIMPLY PREPAID as of T-Mobile's first use of that mark in June or July 2014, including the required level of market penetration;
7. How should it be determined whether SIMPLY PREPAID is "distinctive" or "descriptive," including what role the term SIMPLY plays in that analysis;
8. The status, use and functionality of simplyprepaid.com from 2008 through the present;
9. What actual use has Plaintiff made of the SIMPLY PREPAID mark since the Amazon sales ended in 2018; and
10. What mobile phone related business Plaintiff has conducted since losing its exclusive Sprint dealership in 2019.

The Clerk is directed to forward copies of this Order to all counsel of record.



Anthony J. Trenga
United States District Judge

April 12, 2022
Alexandria, Virginia